

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5556 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MRS S A DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5556 of 1990
MR DC RAVAL for MR MR ANAND for Petitioner No. 1-8
MR PRADIP D BHATE, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 26/07/2004

ORAL JUDGEMENT

1. This petition is filed challenging the decision
of the respondents of issuing the circular dated

06.12.1989 relying upon which circular had been issued by the Superintendent of Ayurvedic Hospital on 20.01.1990 and the orders have been passed by the different Officers on 03.07.1990, 05.07.1990 and finally on 20.07.1998.

2.1 The short facts of the case are that the petitioners are qualified nurses. They hold the qualification of Auxiliary Nurses and Midwives (ANM) given to them by the Gujarat Nursing Council after proper training and after successful completion of the test. There is only one Gujarat Nursing Council for training the nurses for Allopathic Hospitals as well as for Ayurvedic hospitals.

2.2. The petitioners were trained as nurses prior to 1962. They were employed as nurses in various hospitals run by respondent no.1-State. These hospitals were of the allopathic medicine. In the year 1962 the Directorate of Ayurved was started and the petitioners along with large number of other nurses were allocated to the Ayurvedic hospitals. Upon their allocation, they were given transfer with promotion and they all were posted as staff nurses. Thus, their first posting was as Auxiliary Nurses and Midwives (ANM) and their second posting was to the higher post of staff nurses.

2.3. After working as staff nurses from 1962 onwards till 1973 the petitioners and large number of other nurses were sought to be downgraded from the post of staff nurses to that of ANM. As many as 51 nurses approached this Court against this illegal action by Special Civil Application No.3238 of 1979. This petition was allowed by this Court and held that the petitioners and other nurses who were allocated to the Directorate of Ayurved were staff nurses and they were entitled to remain in that cadre and were entitled to the pay scale available to the staff nurses under Desai Pay Commission Report.

2.4. It is the case of the petitioners that respondent no.3 Shri Kasture was working as Superintendent of the Ayurvedic Hospital at the time when the litigation of SCA No.3238/79 was going on. He was terribly displeased by the judgment of this Court but could not do anything about it since the State Government was not inclined to challenge the judgment in appeal. Shri Kasture, however, insisted that the petitioners and other staff nurses should not wear the blue nameplate which was worn by all staff nurses but they wear a green nameplate which is supposed to be worn by the nurses working in the lower post known as ANM where from the petitioners and others

were already promoted in the year 1962.

2.5. In the year 1986 Shri Kasture became the Director of Ayurved which was later on re-designated as R.M.O. of Indian Medicine and Homeopathy Systems. Immediately after becoming Director he started his campaign again that the petitioners and others should wear the green nameplate only. It is obvious that this was done just to humiliate the petitioners who had come from Allopathic hospitals on promotion to Ayurvedic hospitals. When petitioner no.1 and others started making representations against it, he resorted to vindictive transfers. It is well-known that the policy of transfers after 3-5 years is not followed in case of the nursing staff but petitioner no.1 was still transferred though her husband is working in Gandhinagar.

2.6. The petitioner no.1, therefore, was constrained to approach this Court by Special Civil Application No.5858 of 1987. In this petition it was submitted that the transfer was due to personal mala fides of respondent no.2 authority and this was just because he has not accepted the judgment of this Court in the earlier position in good grace. Under that judgment the petitioners were required to be treated as staff nurses for all purposes as far as posting, cadre, seniority, pay-scale etc. are concerned. So the only thing he could find to humiliate the petitioners was by insisting them to wear green coloured nameplates and since the petitioner no.1 was leading the other nurses in opposing these kinds of discriminatory attitudes and humiliations she was sought to be victimized.

2.7. The petition was allowed by this Court holding that the transfer was vitiated by mala fides. This Court expressly found that Shri Kasture was holding grudge against petitioner no.1 because she was putting on blue-coloured nameplate and was not putting the green-coloured nameplate. This Court further found from Government's own resolutions that petitioner no.1 "was entitled to say and assert that she was entitled to put on blue coloured nameplate and not a green-coloured nameplate because it is an admitted position that the staff nurses have to put on blue-coloured nameplates while auxiliary nurses and midwives have to put on green-coloured nameplates". This Court further expressed surprise that Dr.Kasture was insisting that the petitioners wear the green-coloured nameplates in spite of the clear-cut decision. Considering several other points this Court allowed Special Civil Application No.5858 of 1987 with costs by judgment and order dated

22nd March, 1988.

2.8. It is the case of the petitioners that even after the judgment of this Court in Special Civil Application No.5858 of 1979 respondent no.2 refused to implement the judgment and in fact informed petitioner no.1 by letter dated 26.4.1988 that the judgment will not be implemented till the question is decided finally in appeal. The appeal was preferred but this Court passed no order in favour of the State Government. Even then for 4 months petitioner no.1 was not allowed to resume the charge of her post. Ultimately she was given posting at Maniben Ayurvedic Hospital under respondent no.2 after repeated representations. But respondent no.2 in breach of findings of this court continued to insist that the petitioner and other staff nurses wear green nameplate only.

2.9. The petitioners and other staff nurses through their association made representation to the higher authorities requesting them to respect the judgment of this Court and not to insist that the petitioners and other staff nurses wear green nameplate only, which was supposed to be borne by nurses working in the lower post. It is also significant that under respondent no.2 authority himself other staff nurses do wear blue nameplates. The representation of the petitioners and their associations were not responded to.

2.10. It is the case of the petitioners that respondent no.2 authority, however, was obsessed with the issue with the sole desire of providing for green nameplate for the petitioners and other staff nurses who had come from other Directorate and who were not part and parcel originally of the Directorate of Ayurved. Ultimately, he prevailed upon respondent no.1-State to issue a circular providing that the staff nurses who were not originally from the Ayurvedic Department but who were allocated from the allopathic department should wear green nameplate. Surprisingly, this circular does not provide that all staff nurses should wear green nameplate.

2.11. It is only the nurses having qualification of ANM which are required to wear green nameplate has become a kind of badge of stigma which the petitioners and other staff nurses must wear. It is really painful to see that the State Government is going so far to humiliate the petitioners and other staff nurses who had agreed to give up their own cadre to join the Ayurvedic Directorate when they did not have Ayurvedic nurses. It is significant that the circular at Annexure-A in the compilation uses

the excuse that nurses having qualification of ANM should wear the green nameplate. After the circular at Annexure-A in the compilation, the petitioners were given the specific directive to wear green nameplate by a circular letter dated 20.1.1990. Immediately, upon receiving the circular at Annexure-B in the compilation, the petitioners made representation pointing out that this court has held that the petitioners were staff nurses and they must be treated as staff nurses for all purposes and respondent authorities cannot now humiliate the petitioners.

2.12. The petitioners also pointed out that in Special Civil Application No.5858/87 this Court had found that petitioner no.1's transfer was vitiated by mala fides of respondent no.2 because she was wearing blue nameplate that she was entitled to wear as a staff nurse. This Court directed the respondents to pay petitioner no.1 cost of Rs.500/- for that petition. The petitioner, therefore, requested that blue nameplate was for staff nurses and it did not matter whether they have this qualification or that qualification as the nameplate was indicative of the rank or the post of the person and not of the educational qualifications.

2.13. It is the case of the petitioners that the representation of the petitioners did not have any impact and the representation of the petitioner like the one at Annexure-C in the compilation did not have any impact and respondent no.2 and his subordinate under his direction continued to insist that the petitioners should wear only green nameplate. The petitioners replied to the letter at Annexure-D in the compilation by their representation dated 5.7.90 pointing out that in the entire department the nameplates are worn as per designation and cadre and they are not decided as per the educational qualifications.

2.14. The petitioners objected to the fact that they are being singled-out in a small matter and are being threatened and subjected to mental torture. The petitioners also pointed out that they are being called personally and are given threats just to terrorise them and if such activities continued in violation of the judgment of this Court, the petitioners will be constrained to take legal action. The petitioners received no reply to letter at Annexure-E in the compilation, but suddenly three of the petitioners received order dated 20.7.90 saying that as they are not wearing the green nameplates, they will not be allowed to resume duty.

2.15. Accordingly, petitioners no.1,2 & 8 were treated as if their services are terminated or they are placed under suspension and they are not being allowed to report for duty. The remaining petitioners understand that they are also going to get similar letter as at Annexure-F in the compilation which is given to the petitioners which would result in either termination or suspension of their services which is absolutely without any authority of law.

3.1. It is submitted by the learned counsel appearing for the petitioners that the directions issued by respondent nos.2 & 3 are in clear violation of the High Court judgment and the same have been issued only with a view to victimize the petitioners. Though rule was issued on 27.08.1991, yet no reply has been filed by respondent nos. 2 & 3. The petitioners have been protected by this Court by interim order and therefore the decision at Annexure-A in the compilation is never implemented.

3.2. In view of the averments made in the petition, it is clear that the circular at Annexure 'A' was issued with a view to over reach the directions given by this Court in Special Civil Application referred to in the petition and there is no nexus for wearing name plates. Therefore, it seems that it is absolutely misuse of powers by respondent-authorities. Therefore, Government Circular dated 06.12.1989 at Annexure 'A' is required to be quashed and set aside and therefore the same is quashed and set aside.

3.3. The respondent no.1 is directed to recover the cost of this petition from the then Director of Indian Medicine and Homeopathy Systems, Mr.H.S.Kasture respondent no.3 herein, against whom specific allegations have been made in para 3 of the petition, after giving him notice in view of the fact that respondent no.3 has tried to over reach the Court process and had tried to misuse his position. Apart from that the respondent no.3 has not filed reply denying the allegations though served with stay order granted by this Court and has unnecessarily put the Government into the cost of this litigation. Therefore, respondent no.1 will initiate appropriate action against respondent no.3 for recovering the cost of this petition and will put the order on record of this Court.

4. In that view of the matter, this petition is required to be allowed and the same is allowed. Rule is

made absolute to the aforesaid extent.

(K.S.Jhaveri, J)
(pathan)